

COMMITTEE REPORT

MR. PRESIDENT:

The Senate Committee on Judiciary, to which was referred Senate Bill No. 77, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Replace the effective date in SECTIONS 1 through 10 with
- 2 "[EFFECTIVE JANUARY 1, 2003]".
- 3 Page 5, line 20, after "property" insert **"that is"**.
- 4 Page 5, line 22, after "terminates" insert **"or that will remain**
- 5 **perpetually vested in the trustee"**.
- 6 Page 5, line 33, delete "In" and insert **"The following applies to a**
- 7 **fiduciary in"**.
- 8 Page 5, line 35, delete "of sections 16 through 20".
- 9 Page 5, line 35, delete "chapter, a" and insert **"chapter:"**.
- 10 Page 5, delete line 36.
- 11 Page 5, line 37, after "(1)" insert **"A fiduciary"**.
- 12 Page 5, line 39, delete ";" and insert ".".
- 13 Page 5, line 40, after "(2)" insert **"A fiduciary"**.
- 14 Page 6, line 2, delete ";" and insert ". **An inference that the**
- 15 **fiduciary has improperly exercised the discretion does not arise**
- 16 **from the fact that the fiduciary has made or has not made an**
- 17 **allocation contrary to a provision of this chapter."**.
- 18 Page 6, line 3, after "(3)" insert **"A fiduciary"**.
- 19 Page 6, line 6, delete ";" and insert ".".

- 1 Page 6, line 7, after "(4)" insert "**A fiduciary**".
- 2 Page 6, line 8, after "trust" insert "**or the will**".
- 3 Page 6, line 28, delete "," and insert ":"
- 4 (A)".
- 5 Page 6, line 29, delete "," and insert "; and
- 6 (B) considering any power the trustee may have under the
- 7 trust or the will to invade principal or accumulate
- 8 income;".
- 9 Page 6, line 29, beginning with "that" begin a new line block
- 10 indented.
- 11 Page 6, line 32, delete "shall consider all factors" and insert "**may**
- 12 **consider, but is not limited to, any of the following:**".
- 13 Page 6, delete lines 33 through 34.
- 14 Page 7, line 42, after "adjustment;" insert "**or**".
- 15 Page 8, line 1, delete "; or" and insert ".".
- 16 Page 8, delete lines 2 through 3.
- 17 Page 8, line 4, after "(c)(6)," insert "**or**".
- 18 Page 8, line 4, delete ", or (c)(8)".
- 19 Page 8, line 15, delete "or in subsection (c)(8)".
- 20 Page 8, between lines 25 and 26, begin a new paragraph and insert:
- 21 "(g) **Nothing in this chapter is intended to create or imply a duty**
- 22 **to make an adjustment. A trustee incurs no liability for:**
- 23 (1) not considering whether to make an adjustment; or
- 24 (2) choosing not to make an adjustment.
- 25 **Sec. 16. (a) A trustee may give a notice of proposed action**
- 26 **regarding a matter governed by this chapter as set forth in this**
- 27 **section. For purposes of this section, a proposed action includes a**
- 28 **course of action and a decision not to take action.**
- 29 (b) **The trustee shall mail notice of the proposed action to all**
- 30 **living beneficiaries who:**
- 31 (1) are receiving; or
- 32 (2) are entitled to receive:
- 33 (A) income under the trust; or
- 34 (B) a distribution of principal;
- 35 **if the trust were terminated at the time the notice is given.**
- 36 **If a beneficiary described in this subsection is a minor, the trustee**
- 37 **may comply with this subsection by mailing the notice to any court**
- 38 **appointed or natural guardian of the minor.**

1 (c) A trustee is not required to give notice of proposed action to
2 any person who consents in writing to the proposed action. The
3 consent may be executed at any time before or after the proposed
4 action is taken.

5 (d) The notice of proposed action shall state that the notice is
6 given as set forth in this section and shall state all of the following:

7 (1) The name and mailing address of the trustee.

8 (2) The name and telephone number of a person who may be
9 contacted for additional information.

10 (3) A description of the action proposed to be taken and an
11 explanation of the reasons for the action.

12 (4) The time within which objections to the proposed action
13 may be made, which shall be at least thirty (30) days after the
14 mailing of the notice of proposed action.

15 (5) The date on or after which the proposed action may be
16 taken or is effective.

17 (6) A beneficiary may object to the proposed action by
18 mailing a written objection to the trustee at the address stated
19 in the notice of proposed action within the period specified in
20 the notice of proposed action.

21 (e) A trustee is not liable to a beneficiary for an action regarding
22 a matter governed by this chapter if:

23 (1) the trustee does not receive a written objection to the
24 proposed action from the beneficiary within the applicable
25 period; and

26 (2) the other requirements of this section are satisfied.

27 If a beneficiary not entitled to notice objects under this section, the
28 trustee is not liable to any current or future beneficiary with
29 respect to the proposed action.

30 (f) If the trustee receives a written objection within the
31 applicable period, either the trustee or a beneficiary may petition
32 the court to have the proposed action taken as proposed, taken
33 with modifications, or denied. In the proceeding, a beneficiary
34 objecting to the proposed action has the burden of proving that the
35 trustee's proposed action should not be taken. A beneficiary who
36 has not objected is not estopped from opposing the proposed action
37 in the proceeding. If the trustee decides not to implement the
38 proposed action, the trustee shall mail notice to the beneficiaries

described in subsection (b) of the decision not to take the action. The trustee's decision not to implement the proposed action does not itself give rise to liability to any current or future beneficiary. Within thirty (30) days after the mailing of the notice not to implement the proposed action, a beneficiary may petition the court to have the action taken and has the burden of proving that it should be taken.

Sec. 17. (a) A court shall not change a fiduciary's decision to exercise or not to exercise a discretionary power conferred by this chapter unless it determines that the decision was an abuse of the fiduciary's discretion. A court shall not determine that a fiduciary abused its discretion merely because the court would have exercised the discretion in a different manner or would not have exercised the discretion.

(b) The decisions to which subsection (a) applies include the following:

(1) A determination under section 15(a) of this chapter of whether and to what extent an amount should be transferred from principal to income or from income to principal.

(2) In deciding whether and to what extent to exercise the power conferred by section 15(a) of this chapter, a determination of the following:

(A) The factors that are relevant to the trust and the trust's beneficiaries.

(B) The extent to which the factors are relevant.

(C) The weight, if any, to be given to the relevant factors.

(c) If a court determines that a fiduciary has abused the fiduciary's discretion, the remedy shall be to restore the income and remainder beneficiaries to the positions they would have occupied if the fiduciary had not abused the fiduciary's discretion, subject to the following:

(1) To the extent that the abuse of discretion has resulted in no distribution to a beneficiary or a distribution that is too small, the court shall require the fiduciary to distribute to the beneficiary an amount that the court determines will restore the beneficiaries, in whole or in part, to their appropriate positions.

(2) To the extent that the abuse of discretion has resulted in a

distribution to a beneficiary that is too large, the court shall restore the beneficiaries, in whole or in part, to their appropriate positions by requiring:

- (A) the fiduciary to withhold an amount from at least one
- (1) future distribution to that beneficiary; or
- (B) the beneficiary to return some or all of the distribution to the trust.

(3) To the extent the court is unable, after applying subdivisions (1) and (2), to restore the beneficiaries to the positions they would have occupied if the fiduciary had not abused the fiduciary's discretion, the court shall require the fiduciary to pay an appropriate amount to:

- (A) at least one (1) of the beneficiaries;
- (B) the trust; or
- (C) entities under both clauses (A) and (B).

(d) Upon a petition by the fiduciary, the court having jurisdiction over the trust or estate shall determine whether a proposed exercise or nonexercise of a discretionary power by the fiduciary will result in an abuse of the fiduciary's discretion. The petition shall:

- (1) describe the proposed exercise or nonexercise of the power;
- (2) contain sufficient information to inform the beneficiaries of:
 - (A) the reasons for the proposal; and
 - (B) the facts upon which the fiduciary relies; and
- (3) contain an explanation of how the income and remainder beneficiaries will be affected by the proposed exercise or nonexercise of the power.

(e) A beneficiary who challenges a fiduciary's proposed decision or actual decision to exercise or not to exercise a discretionary power conferred by this chapter shall have the burden of establishing that it will result or did result in an abuse of discretion."

Page 8, line 26, delete "16" and insert "18".

Page 8, line 31, delete "18" and insert "20".

Page 8, line 31, delete "41" and insert "43".

Page 8, line 38, delete "18" and insert "20".

- 1 Page 8, line 38, delete "41" and insert "**43**".
- 2 Page 9, line 32, delete "17" and insert "**19**".
- 3 Page 9, line 40, delete "36" and insert "**38**".
- 4 Page 9, line 40, delete "37" and insert "**39**".
- 5 Page 10, line 14, delete "17" and insert "**19**".
- 6 Page 10, line 14, delete "16(4)" and insert "**18(4)**".
- 7 Page 11, line 11, delete "18" and insert "**20**".
- 8 Page 11, line 34, delete "19" and insert "**21**".
- 9 Page 11, line 35, delete "16(1)" and insert "**18(1)**".
- 10 Page 12, line 11, delete "21" and insert "**23**".
- 11 Page 12, line 20, delete "20" and insert "**22**".
- 12 Page 12, line 40, delete "21" and insert "**23**".
- 13 Page 13, line 3, delete "22" and insert "**24**".
- 14 Page 13, line 5, delete "23" and insert "**25**".
- 15 Page 13, line 7, delete "35" and insert "**37**".
- 16 Page 14, line 2, delete "22" and insert "**24**".
- 17 Page 14, line 10, delete "21" and insert "**23**".
- 18 Page 14, line 10, delete "35" and insert "**37**".
- 19 Page 14, line 12, delete "23" and insert "**25**".
- 20 Page 15, line 1, delete "34" and insert "**36**".
- 21 Page 15, line 2, delete "24" and insert "**26**".
- 22 Page 15, line 12, delete "21" and insert "**23**".
- 23 Page 15, line 12, delete "35" and insert "**37**".
- 24 Page 15, line 15, delete "37(a)(7)" and insert "**39(a)(7)**".
- 25 Page 15, line 25, delete "28" and insert "**30**".
- 26 Page 15, line 25, delete "35" and insert "**37**".
- 27 Page 15, line 27, delete "25" and insert "**27**".
- 28 Page 15, line 37, delete "26" and insert "**28**".
- 29 Page 16, between lines 8 and 9, begin a new paragraph and insert:
- 30 "**(c) Notwithstanding any other provision of this section, when**
- 31 **an obligation described in this section is held as an asset of a**
- 32 **charitable remainder trust, an increase in the value of the**
- 33 **obligation over the value of the obligation at the time of acquisition**
- 34 **by the trust is distributable as income. For purposes of this**
- 35 **subsection, the increase in value is available for distribution only**
- 36 **when the trustee receives cash on account of the obligation. If the**
- 37 **obligation is surrendered or liquidated partially, the cash available**
- 38 **shall be attributed first to the increase. The increase is**

- 1 **distributable to the income beneficiary who is the income**
- 2 **beneficiary at the time the cash is received."**
- 3 Page 16, line 9, delete "(c)" and insert "(d)".
- 4 Page 16, line 10, delete "29, 30, 31, 32, 34, or 35" and insert "**31,**
- 5 **32, 33, 34, 36, or 37"**.
- 6 Page 16, line 11, delete "27" and insert "**29"**.
- 7 Page 16, line 21, delete "23" and insert "**25"**.
- 8 Page 16, line 23, delete "29" and insert "**31"**.
- 9 Page 16, line 25, delete "28" and insert "**30"**.
- 10 Page 16, line 26, delete " 29, 30, 31, 32, or 35" and insert "**31, 32,**
- 11 **33, 34, or 37"**.
- 12 Page 16, line 41, delete "29" and insert "**31"**.
- 13 Page 16, line 42, delete "30" and insert "**32"**.
- 14 Page 17, line 4, after "payments" insert ", **regardless of whether**
- 15 **the trustee also has the option to receive the amount in a lump sum**
- 16 **or other form of payment"**.
- 17 Page 17, between lines 15 and 16, begin a new paragraph and insert:
- 18 "**(d) If a payment is not characterized as interest or a dividend,**
- 19 **and if the payment is made from an individual account**
- 20 **corresponding to an original participant, the payment shall be**
- 21 **allocated between income and principal by:**
- 22 (1) **determining the income occurring within the individual**
- 23 **account by treating the account as though it were a trust; and**
- 24 (2) **considering the income to be distributed as a pro rata**
- 25 **portion of all payments made from the individual account**
- 26 **during the year."**
- 27 Page 17, line 16, delete "(d)" and insert "(e)".
- 28 Page 17, line 17, delete "or an equivalent payment," and insert "**or**
- 29 **allocated under subsection (d),"**.
- 30 Page 17, between lines 25 and 26, begin a new paragraph and insert:
- 31 "**(f) Notwithstanding any other provision of this section, when**
- 32 **a private or commercial deferred annuity is held as an asset of a**
- 33 **charitable remainder trust, an increase in the value of the**
- 34 **obligation over the value of the obligation at the time of the**
- 35 **acquisition by the trust is distributable as income. For purposes of**
- 36 **this subsection, the increase in value is available for distribution**
- 37 **only when the trustee exercises a right of withdrawal or otherwise**
- 38 **receives cash on account of the obligation. If the obligation is**

- 1 surrendered wholly or partially before annuitization, the cash
- 2 available shall be attributed first to the increase. The increase is
- 3 distributable to the income beneficiary who is the income
- 4 beneficiary at the time the cash is received."
- 5 Page 17, line 26, delete "(e)" and insert "(g)".
- 6 Page 17, line 26, delete "an" and insert "a gift or".
- 7 Page 17, line 29, delete "marital".
- 8 Page 17, line 30, delete "30" and insert "32".
- 9 Page 17, line 38, delete "29" and insert "31".
- 10 Page 17, line 39, delete "31" and insert "33".
- 11 Page 17, line 40, delete "32" and insert "34".
- 12 Page 17, line 41, delete "34" and insert "36".
- 13 Page 17, line 42, delete "35" and insert "37".
- 14 Page 18, line 2, delete "38" and insert "40".
- 15 Page 18, line 5, delete "31" and insert "33".
- 16 Page 18, line 30, delete "July 1, 2002," and insert "**January 1,**
- 17 **2003,**".
- 18 Page 18, line 32, delete "July 1, 2002." and insert "**January 1,**
- 19 **2003.**".
- 20 Page 18, line 33, delete "June 30, 2002," and insert "**December 31,**
- 21 **2002,**".
- 22 Page 18, line 36, delete "32" and insert "34".
- 23 Page 19, line 21, delete "on July 1, 2002".
- 24 Page 19, line 24, delete "July 1, 2002." and insert "**January 1,**
- 25 **2003.**".
- 26 Page 19, line 25, delete "June 30, 2002," and insert "**December 31,**
- 27 **2002,**".
- 28 Page 19, line 28, delete "33" and insert "35".
- 29 Page 20, line 4, delete "34" and insert "36".
- 30 Page 20, line 13, delete "23" and insert "25".
- 31 Page 20, line 30, delete "35" and insert "37".
- 32 Page 20, line 37, delete "sections 21 or 29 of this chapter apply."
- 33 and insert "**section 23 or section 31 of this chapter applies.**".
- 34 Page 21, line 9, delete "36" and insert "38".
- 35 Page 21, line 11, delete "16(2)(B)" and insert "**18(2)(B)**".
- 36 Page 21, line 11, delete "16(2)(C)" and insert "**18(2)(C)**".
- 37 Page 21, line 29, delete "37" and insert "39".
- 38 Page 21, line 32, delete "36(1)" and insert "**38(1)**".

- 1 Page 21, line 32, delete "36(2)" and insert "**38(2)**".
- 2 Page 21, line 41, delete "36(4)" and insert "**38(4)**".
- 3 Page 22, line 18, delete "38" and insert "**40**".
- 4 Page 22, line 31, delete "23" and insert "**25**".
- 5 Page 22, line 35, delete "39" and insert "**41**".
- 6 Page 23, line 13, delete "37(a)(7)" and insert "**39(a)(7)**".
- 7 Page 23, line 18, delete "40" and insert "**42**".
- 8 Page 23, line 36, delete "41" and insert "**43**".
- 9 Page 24, line 24, delete "42" and insert "**44**".
- 10 Page 27, line 4, delete "IC 30-2-14-18" and insert "**IC 30-2-14-20**".
- 11 Page 27, line 7, delete "IC 30-2-14-18" and insert "**IC 30-2-14-20**".
- 12 Page 27, line 14, delete "IC 30-2-14-16" and insert "**IC 30-2-14-18**".
- 13 Page 28, line 18, delete "IC 30-2-14-31" and insert "**IC 30-2-14-33**".
- 14 Page 28, between lines 23 and 24, begin a new paragraph and insert:
- 15 "SECTION 9. IC 34-30-2-129.5 IS ADDED TO THE INDIANA
- 16 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 17 [EFFECTIVE JANUARY 1, 2003]: **Sec. 129.5. IC 30-2-14-15**
- 18 **(concerning a trustee's power to adjust trust principal and**
- 19 **income).**
- 20 SECTION 10. IC 34-30-2-129.6 IS ADDED TO THE INDIANA
- 21 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
- 22 [EFFECTIVE JANUARY 1, 2003]: **Sec. 129.6. IC 30-2-14-16**
- 23 **(concerning a proposed action by a trustee of a trust)."**
- 24 Page 28, line 29, delete "July 1, 2002," and insert "**January 1,**
- 25 **2003,**".

- 1 Renumber all SECTIONS consecutively.
 (Reference is to SB 77 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 11, Nays 0.

Bray

Chairperson